

CLAIM SUMMARY / DETERMINATION

Claim Number:	N18037-0001
Claimant:	Texas General Land Office
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$759.18

FACTS:

Oil Spill Incident:

On April 19, 2018, at 0924 the State of Texas General Land Office (TGLO) State On-Scene Coordinator (SOSC), Mr. ██████████, responded to a report¹ of an oil sheen and black oil in the Sabine Neches Ship Channel, in Jefferson County, Texas.² There were several other reports of sheen and black oil being discovered around the general vicinity.³

At 0934, SOSC ██████████ notified and coordinated with the United States Coast Guard (USCG), PO ██████████, from Marine Safety Unit (MSU), Port Arthur. At 1015, both the SOSC and MSU Port Arthur staff, were on scene working to federalize the oil spill cleanup, when approximately 10 gallons of what appeared to be black bilge oil washed in around a sailboat at the end of, Dock D. Another one gallon of black oil and sheen was visible around the Jefferson County Sheriff Office dock.

At 1133 MSU personnel and SOSC ██████████ investigated Dustin Seafood Shrimp Dock and found sheening and less than one gallon of emulsified oil against its bulkhead. Additional sheen was found blowing in from the main channel.

Two oil samples were taken by the Coast Guard and captured in both SITREP ONE AND FINAL by MSU Port Port Arthur and in the SOSC Chronology Report. The first oil sample (oil sample #1) was taken from the oil at Port Authority and the second oil sample (sample #2) was taken from clean water at Port Authority.⁴

At 1250, approximately 15 gallons of black oil washed out from under the Jefferson County Sheriff dock. Coast Guard requested additional Oil Mop personnel be brought on scene to assist with the cleanup operations.⁵

At 1350, a 5' x 100' sheen and broken emulsified oil was found at the Sabine, Coast Guard Station, which was unable to be cleaned up.

¹ NRC Incident Report # 1209701

² See, Texas Oil or hazardous Substances Discharge or Spill Report.

³ See, Response Chronology for Response Officer, ██████████, in claim file.

⁴ Id.

⁵ Id.

Description of Removal Actions Performed:

The National Pollution Funds Center (NPFC), Oil Spill Liability Trust Fund (OSLTF) was opened and Oil Mop was hired under BOA # HSCG84-17-A-N00068,⁶ to recover, remove, and dispose of the spilled oil.

Oil Mop arrived on scene at 1130 with five personnel and equipment.⁷ Port Arthur personnel conducted a safety brief prior to clean up operations. At 1210 Oil Mop began cleanup operations. Oil Mop removed boards from the Jefferson County Sheriff dock and flushed under the pier and provided extra personnel based on the Coast Guard's request.

SOSC [REDACTED] relieved SOSC [REDACTED] on, April 19, 2018 at 1430. Cleanup activities were underway and A Dock spill area had dissipated and D Dock spill area was cleaned. All vessels on D Dock were cleaned except "Sea Horse," which left and returned. A sailboat berthed in slip D-1 is scheduled to be cleaned, April 20th.⁸

After the investigations were performed by, MSU Port Arthur and TGLO Response Personnel, a source of the spill was not determined.

The SOSC assisted and monitored the cleanup efforts of the contractor, Oil Mop.⁹ TGLO states in their claim submission, the cleanup was consistent with the National Contingency Plan (NCP) and approximately 27 – 30 gallons of waste / bilge oil was cleaned up.¹⁰

Claim:

On May 11, 2018, TGLO submitted a removal cost claim to the NPFC for reimbursement of its uncompensated removal costs in the amount of \$759.18 for its response personnel and equipment.¹¹ The claimant provided a signed TGLO Expedited Small Claim Form, TGLO Spill Prevention & Response Program Incident Response Cost Invoice, TGLO Oil Spill Incident Report for Spill Number 2018-1411, and SOSC Notes.¹²

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."

⁶ See, COGARD MSU Port Arthur, TX to CCGDEIGHT New Orleans, LA, Authorization Proceed.

⁷ See, Response Chronology for Response Officer, [REDACTED], in claim file.

⁸ See, Response Chronology for Response Officer, [REDACTED], in claim file.

⁹ See, SOSC notes in claim file.

¹⁰ See, pictures provided by Claimant.

¹¹ SOSC [REDACTED] and [REDACTED], three 4x4 trucks/response vehicles.

¹² See claim file.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Findings of Facts:

1. FOSC coordination has been established by USCG MSU Port Arthur via Federal Project Number N18037¹³. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge “oil” as defined in OPA 90, 33 U.S.C. § 2701 (23) to navigable waters;
3. A Responsible Party was not determined. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. §2712(h)(1);
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Manager reviewed the actual cost invoices and dailies to confirm, Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, and mitigate the effects of the incident); (2) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (3) whether the costs were adequately documented and reasonable.

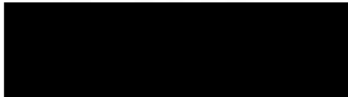
Upon adjudication, the NPFC confirmed that the state charged its standard published rates for its personnel and vehicles at the time services were provided. The NPFC also confirmed TGLO’s joint response and oversight as referenced in the SITREP created by MSU Port Arthur. Based on the foregoing, the NPFC hereby determines, the NPFC will offer and the OSLTF is available to pay **\$759.18** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # N18037-0001. All of the costs deemed compensable by the Fund have been paid for by the Claimant for removal actions as that term is defined in OPA and are compensable removal costs payable by the OSLTF as presented by the Claimant.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 U.S.C. §§2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in a case in which there is a substantial threat of discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.

C. Determined Amount:

The NPFC hereby determines, the OSLTF will pay **\$759.18** as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim # N18037-0001.

¹³ See, SITREP ONE AND FINAL dated April 23, 2018.



Claim Supervisor: [Redacted]

Date of Supervisor's review: *5/17/18*

Supervisor Action: *Approved*

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